

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	

COMMENTS OF
TELATRON MARKETING GROUP, INC.

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I. INTRODUCTION

Telatron Marketing Group, Inc. (“Telatron”), by its undersigned counsel, hereby submits these comments in response to the Commission’s above captioned notice of proposed rulemaking seeking comment on its rules governing unwanted telephone solicitations.¹

With over 17 years of experience in providing telemarketing services to the financial services industry, Telatron has direct experience with the FCC’s telemarketing rules and state do-not-call lists. Telatron believes that it is the lack of a national database that is hindering consumer confidence in do-not-call lists and undermining the effectiveness of telemarketers’ compliance efforts. Telatron therefore strongly supports the establishment of a national do-not-call list for residential consumers who do not wish to receive telephone solicitations. As discussed below, a national do-not-call list is needed to replace the unworkable collection of state do-not-call lists that has given rise to an inefficient, burdensome and confusing process for telemarketers and consumers.

¹ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 02-250 (rel. Sept. 18, 2002) (“*NPRM*”).

II. A NATIONAL DO-NOT-CALL LIST WOULD BENEFIT TELEMARKETERS BY ELIMINATING THE INEFFICIENT AND UNREASONABLY BURDENSOME PROCESS THAT EXISTS UNDER STATE DO-NOT-CALL LAWS

The Commission recognizes the potential for confusion that consumers, telemarketers and regulators will encounter if inconsistencies exist between do-not-call lists administered by different governing bodies.² The Commission further recognizes that administration of both a national and multiple state do-not-call database may not be feasible and would lead to consumer confusion and duplicative administrative costs.³

If inconsistencies between two separately administered federal do-not-call lists must be reconciled to minimize confusion for consumers, telemarketers and regulators and to avoid duplicative costs, it is relevant to consider how much more confusing, inefficient and costly is the current approach that requires telemarketers to comply with more than 20 separately administered state do-not-call lists. Telatron respectfully submits that establishing a single, national do-not-call database would be the best solution to minimizing the potential for confusion among do-not-call lists promulgated by different regulatory bodies. A single national do-not-call list should replace the unworkable patchwork of state do-not-call lists that is hindering the compliance efforts of Telatron and other responsible telemarketers.

² *NPRM* at ¶ 57 (seeking comment on how to minimize potential for confusion if inconsistencies exist between the Federal Trade Commission's proposed national-do-not call and any national do-not-call list established by the FCC).

³ *Id.* ¶ 65.

A. A National Do-Not-Call List Would Benefit Telemarketers By Allowing Them To Turn To a Single Source To Identify Consumers Who Do Not Wish To Receive Telemarketing Calls

Contrary to the negative perception of telemarketers held in some quarters, responsible telemarketing organizations such as Telatron have no desire to contact consumers who wish to put a stop to all telephone solicitations. Telatron understands that there is little to be gained by contacting consumers who have no desire to receive such communications. Telatron recognizes, as do other responsible telemarketers, that continuing to contact these consumers will undermine consumer confidence in do-not-call lists and ultimately fosters negative connotations about telemarketing solicitations generally.

Armed with this understanding, legitimate telemarketing organizations are committed to assuring that consumers continue to look to telemarketing as a convenient and reliable source of information about products and services available for purchase in the marketplace. To that end, telemarketers make every effort to assure that their marketing practices comply with federal and state telemarketing rules and regulations. Their efforts in this regard, however, are unduly burdened by state do-not-call lists and the associated regulations.

Telemarketers currently must contend with state regulations that can differ vastly in the type of activity regulated, how such activity is defined, the timelines for release of databases, and the methods of distribution. The lack of uniformity among state do-not-call lists has created a virtual minefield for telemarketers, who are forced to micro-manage their lists according to where they are calling, the type of call being placed, and the status of the parties, including

whether the parties to be called are current customers or have an established business relationship. The process of resolving inconsistencies and taking in account state-specific exceptions has become an inefficient and unreasonably burdensome process for telemarketers.

The Commission seeks comment on whether a national database would correct any of the shortcomings of the state lists.⁴ In Telatron's view, a single, national do-not-call database is the best solution to correcting an unduly burdensome process that undermines the effectiveness of its compliance efforts and contributes to confusion among consumers who do not fully understand the protections and limitations of state do-not-call lists.

B. A National Do-Not-Call Database Would Improve Telemarketers' Ability to Identify Consumers Who Do Not Wish To Receive Telephone Solicitations

The Commission also asks whether a national do-not-call list provides any advantages to telemarketers in identifying consumers who do not wish to be contacted.⁵ Telatron submits that the establishment of a national do-not-call list is the solution that telemarketers need to easily identify those consumers who do not want to receive any telemarketing calls. Telemarketers would no longer be required to engage in the inefficient and costly process of reconciling do-not-calls lists from multiple sources and could turn, instead, to a single database for this information.

Establishment of a national do-not-call list, moreover, would free telemarketers to more fully concentrate their efforts on assuring that their telephone solicitations comply with the requirements of the TCPA.⁶ A national do-not-call list would therefore also improve the

⁴ *Id.* ¶ 60.

⁵ *Id.* ¶ 52.

⁶ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227 ("TCPA").

effectiveness of compliance efforts of responsible telemarketing organizations and would ultimately help to restore consumer confidence in do-not-call lists.

III. A NATIONAL DO-NOT-CALL LIST WOULD BENEFIT CONSUMERS BY ELIMINATING THE INEFFICIENT AND CONFUSING PROCESS THAT EXISTS UNDER STATE DO-NOT-CALL LAWS

In addition to eliminating the burdens imposed upon telemarketers by the collection of different state do-not-call lists, a national do-not-call list would benefit consumers by minimizing the burdens placed on consumers who do not wish to receive telemarketing calls, including the potential for confusion that consumers currently encounter through the administration of multiple do-not-call lists established by different sources.

A. A National Do-Not-Call List Would Benefit Consumers By Allowing Them To Turn To a Single Source To Register Their Preference To Not Receive Telemarketing Calls

Under the Commission's existing rules, consumers who do not wish to receive telemarketing calls must express their desire to be placed on a do-not-call list on a company-by-company basis. As Commissioner Abernathy recognizes, this process imposes a continuing burden on consumers who do not wish to receive such calls. Consumers need, instead, "a reliable and simple way to stop undesired telemarketing calls."⁷

Establishing a national do-not-call list would benefit consumers who do not wish to receive telephone solicitations by allowing them to turn to a single source to register their preference to not receive telemarketing calls. Consumers who do not wish to receive telephone solicitations would no longer be continuously burdened with having to establish on a company-by-company basis their desire to be placed on a do-not-call list. Instead, a national do-not-call

⁷ *NPRM*, Separate Statement of Comm'n'r Abernathy at 2.

list would give consumers an efficient, “one-stop” method for minimizing unwanted telemarketing calls.

B. A National Do-Not-Call List Would Reduce the Potential For Confusion Among Consumers Which Results From the Inefficient and Confusing Patchwork of State Do-Not-Call Lists

State do-not-call lists are poorly understood by consumers. Consumers mistakenly believe that their registration on a “do-not-call” list will prevent all telemarketing calls. When consumers who have registered on such lists continue to receive telemarketing calls from telemarketers that are, in fact, fully complying with state do-not-call rules, they are confused and often irritated by such calls.

The lack of understanding among consumers of the protections afforded under do-not-call lists is the result of permitting the administration of state multiple do-not-calls lists that vary widely in terms of protections. The Commission itself recognizes that state-administered do-not-call lists currently in place or under consideration can be vastly different in terms of the type of activity regulated and the definitions used to describe those activities.⁸ Equally diverse are the numerous exceptions to the requirements that have been adopted.⁹ While responsible telemarketers are aware of such critical distinctions, consumers are not. They mistakenly believe that state do-not-call lists are an all-inclusive method to avoid unwanted telemarketing calls.

Telatron believes that consumers should be able to look to a single source for information about the scope of the protections available to them. They should not be burdened with having to comprehend the myriad distinctions and exceptions that exist among federal telemarketing rules and state do-not-call lists. A national do-not-call list would benefit consumers by

⁸ *Id.* ¶ 5.

eliminating the confusion inherent in permitting the administration and enforcement of inconsistent do-not-call lists and by allowing them to turn to a single source for information about the scope and nature of the protections available to them.

**IV. A NATIONAL DO-NOT-CALL LIST WOULD MORE EFFECTIVELY
BALANCE THE INTERESTS OF CONSUMERS AND TELEMARKETERS
THAN DOES THE PRESENT PATCHWORK OF STATE DO-NOT-CALL LISTS**

In enacting the TCPA, Congress provided that “individuals’ privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.”¹⁰ Congress directed that these interests be “balanced” in recognition of the fact that not all consumers view commercial calls as a nuisance or invasion of privacy. Congress expressly found that the total U.S. sales generated through telemarketing was in excess of \$400 billion in 1990.¹¹ A segment of the American population, therefore, willingly receives telephone solicitations. They accept such calls as a useful and effective means of obtaining information about products and services in the marketplace.

Judging by some state do-not-call laws, however, permitting legitimate telemarketing practices has fallen a victim to state government initiatives that place the protection of consumers’ privacy above all other interests -- even the interests of consumers who desire to receive (or who do not object to receiving) telemarketing calls. Such laws -- notably, those of Kentucky -- appear to be founded upon the belief that without stringent regulation, all

⁹ *Id.*

¹⁰ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1994), *codified at* 47 U.S.C. § 227.

telemarketers will readily resort to intrusive telemarketing practices without regard to consumers' privacy rights. This black view of telemarketers is central to the myth that consumers everywhere share the desire to put a halt to all telemarketing calls.

If, however, all consumers in fact shared this belief, businesses that rely on telemarketing would have long since abandoned that method as an ineffective and costly means of disseminating information and generating sales. As noted above, the facts do not bear this out. Telemarketing generates hundreds of billions of dollars in sales each year. The Commission itself noted that telemarketing accounts for more than one-third of the total U.S. sales attributed to direct marketing.¹² A segment of the U.S. population, therefore, relies on telemarketing solicitations to obtain useful, up-to-the minute information about goods and services available for purchase. It is these consumers that Telatron and other telemarketing organizations desire to reach.

As explained above, Telatron and other responsible telemarketers have no desire to reach consumers that do not wish to receive telemarketing calls. For this reason, do-not-call lists offer telemarketers the advantage of easily identifying those who oppose such calls. The advantage of such lists, however, has been diminished in many states where do-not-call lists are being used -- not as an tool for consumer protection -- but as a weapon against the telemarketing industry as a whole.

For example, the do-not-call laws adopted by Kentucky impose burdens upon telemarketers that appear to directed towards eliminating any telemarketing activity in the state --

¹¹ *Id.* Telemarketing, moreover, indirectly supports the continued employment of hundreds of thousands of individuals who work for the businesses whose products and services are sold through telemarketing.

¹² *NPRM* at ¶ 7.

not merely activity that is harmful to Kentucky's citizens. Kentucky has tied its do-not-call list to unduly burdensome and costly registration requirements, which effectively disallow telemarketing groups to participate within the state without registering their staff and all scripting. The burden comes not from the registration process, but in the requirement of immediate notification of any changes.

In the telemarketing industry, effective scripting distinguishes successful telemarketers and constant change is the norm to ensure that all legal disclosures are given to consumers in a clear and concise manner. Scripting also provides detailed answers to consumer questions which allows them to make an informed decision. The effect of Kentucky's overly-restrictive laws has been to discourage telemarketers from conducting telemarketing activities in the state. While this may be the intent of the lawmakers, the effect of the do-not-call laws also has been to deprive those Kentucky citizens who have not registered on the state do-not-call list of the right to make their own decision as to whether to accept such telemarketing calls. The decision as to whether to accept such calls has effectively been unilaterally decided for all Kentucky consumers by the Kentucky legislature.

Telatron submits that overly-restrictive state do-not-call laws that are being used as a weapon against the entire telemarketing industry fail to adhere to Congress' directive that the privacy interests of consumers and those of telemarketers and the consumers they are trying to reach "be balanced." Consumers who desire to continue to receive telemarketing calls or who do not object to receiving such calls should not be deprived of the right to choose whether to receive such calls merely because legislators are responding to a more vocal segment of telephone subscribers who wish to halt all telemarketing calls.

Similarly, responsible telemarketers who wish to communicate with consumers who do not object to receiving telemarketing calls should not be unreasonably hindered or restricted in their legitimate efforts to provide useful information. Telatron submits that a national do-not-call list should be established to relieve telemarketers of state do-not-call rules that are aimed at disabling the industry, rather than protecting the interests of all consumers and of telemarketers that provide a valuable business practice. A national do-not-call list is necessary to replace state do-not-call laws that unreasonably hinder legitimate and responsible telemarketing efforts.

V. CONCLUSION

Telatron strongly supports the establishment of a national do-not-call list to replace the existing patchwork of state do-not-call lists. As discussed above, a national do-not-call list is needed to replace the unworkable collection of state do-not-call lists that has given rise to an inefficient, burdensome and confusing process for telemarketers and consumers.

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